

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Our File No.: 3459-18

LIONELL WILLIAMS,

Plaintiff(s),

-against-

THE CITY OF NEW YORK,
COMMISSIONER RAYMOND KELLY IN
HIS OFFICIAL CAPACITY, P.O. JOHN DOE
#1, BADGE #: 25511; P.O. JANE DOE #2,
BADGE #: 12414 AND BEST BUY,

Defendant(s).

INDEX NO.: 300732/14

**ANSWER TO VERIFIED COMPLAINT
WITH CROSS-CLAIMS**

Defendant, **BEST BUY STORES, L.P.** (Improperly plead as "BEST BUY")
(hereinafter "**BEST BUY**"), by its attorneys, DURKIN & DURKIN, LLP, as and for its answer
to the plaintiff's complaint, respectfully sets forth the following, upon information and belief:

AS AND FOR THE FIRST CAUSE OF ACTION

1. Defendant, BEST BUY, is without sufficient information to form a belief as to
the truth or falsity of the allegations contained in this paragraph and as such the allegations in
this paragraph are denied.

2. Defendant, BEST BUY, denies the allegation contained in numbered paragraph
2 except that BEST BUY was and is a foreign corporation authorized to conduct business in the
State of New York.

3. Defendant, BEST BUY, denies the allegation contained in numbered paragraph
3 except that BEST BUY was and is a foreign corporation authorized to conduct business in the
State of New York.

4. The allegations contained in this paragraph are addressed to a defendant other than Defendant , BEST BUY, hence no response is required nor made. To the extent that this paragraph contains allegations directed at or to Defendant, BEST BUY, they are denied entirely.

5. Defendant, BEST BUY, is without sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph and as such the allegations in this paragraph are denied.

6. Defendant, BEST BUY, is without sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph and as such the allegations in this paragraph are denied.

7. Defendant, BEST BUY, is without sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph and as such the allegations in this paragraph are denied.

8. The allegations contained in this paragraph are addressed to a defendant other than Defendant , BEST BUY, hence no response is required nor made. To the extent that this paragraph contains allegations directed at or to Defendant, BEST BUY, they are denied entirely.

9. Defendant, BEST BUY, denies the allegation contained in this paragraph.

AS AND FOR THE SECOND CAUSE OF ACTION

10. Defendant, BEST BUY repeats and realleges each and every allegation as contained in paragraphs “1” through “9” of the Complaint with the same force and effect as though each were more fully set forth at length herein.

11. Defendant, BEST BUY, denies each and every allegation contained in this paragraph.

AS AND FOR THE THIRD CAUSE OF ACTION

12. Defendant, BEST BUY repeats and realleges each and every allegation as contained in paragraphs "1" through "11" of the Complaint with the same force and effect as though each were more fully set forth at length herein.

13. Defendant, BEST BUY, denies each and every allegation contained in this paragraph.

AS AND FOR THE FOURTH CAUSE OF ACTION

14 Defendant, BEST BUY repeats and realleges each and every allegation as contained in paragraphs "1" through "13" of the Complaint with the same force and effect as though each were more fully set forth at length herein.

15. Defendant, BEST BUY, denies each and every allegation contained in this paragraph.

AS AND FOR THE FIFTH CAUSE OF ACTION

16. Defendant, BEST BUY repeats and realleges each and every allegation as contained in paragraphs "1" through "18" of the Complaint with the same force and effect as though each were more fully set forth at length herein.

17. The allegations contained in this paragraph are addressed to a defendant other than Defendant , BEST BUY, hence no response is required nor made. To the extent that this paragraph contains allegations directed at or to Defendant, BEST BUY, they are denied entirely.

18. The allegations contained in this paragraph are addressed to a defendant other than Defendant, BEST BUY, hence no response is required nor made. To the extent that this paragraph contains allegations directed at or to Defendant, BEST BUY, they are denied entirely.

19. Defendant, BEST BUY, is without sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph and as such the allegations in this paragraph are denied.

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AS AND FOR FIRST AFFIRMATIVE DEFENSE:

Upon information and belief, the injuries allegedly sustained by plaintiff were not a result of any culpable conduct by the defendant herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the culpable conduct of plaintiff, which contributed to or caused plaintiff's injuries.

AS AND FOR SECOND AFFIRMATIVE DEFENSE:

Upon information and belief, this Court lacks jurisdiction over the subject matter of this action.

AS AND FOR THIRD AFFIRMATIVE DEFENSE:

Plaintiff's Verified Complaint fails to state a cause of action.

AS AND FOR FOURTH AFFIRMATIVE DEFENSE:

The causes of action in intentional tort are barred, in that plaintiff has failed to bring the action within the one (1) year, as set forth in Section 215(3) of the CPLR.

AS AND FOR FIFTH AFFIRMATIVE DEFENSE:

Upon information and belief, any damages sustained by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and/or were aggravated by the culpable conduct of plaintiff.

AS AND FOR SIXTH AFFIRMATIVE DEFENSE:

Any damages sustained by plaintiff were caused by plaintiff's having voluntarily and unreasonably assumed a known and dangerous risk, and/or the damages were caused by or aggravated by such conduct.

AS AND FOR SEVENTH AFFIRMATIVE DEFENSE:

This defendant will rely upon the provisions of Article 16 of CPLR with regard to the limitation of joint and several liability.

AS AND FOR EIGHTH AFFIRMATIVE DEFENSE:

Upon information and belief, defendant never received actual or constructive notice of any wrongful conduct, and therefore, it/they cannot be liable for any alleged injuries suffered by plaintiff.

AS AND FOR NINTH AFFIRMATIVE DEFENSE:

Upon information and belief, if plaintiff suffered any damages as alleged in the Verified Complaint, such damages were as a result of an independent superseding act by a third party for which defendant cannot be held liable, and defendant's conduct was in no way the proximate cause of such damages.

AS AND FOR TENTH AFFIRMATIVE DEFENSE:

If plaintiff suffered damages as alleged, then plaintiff failed to mitigate such damages.

AS AND FOR ELEVENTH AFFIRMATIVE DEFENSE:

If plaintiff herein has received remuneration and/or compensation for some or all of his or her claimed economic loss, or will with reasonable certainty receive remuneration and/or compensation for said loss in the future, this defendant is entitled to have plaintiff's award, if any, reduced by the amount of said remuneration and/or compensation, pursuant to Section 4545 (c) of the CPLR.

AS AND FOR TWELFTH AFFIRMATIVE DEFENSE:

Defendant's actions are protected by the Shopkeeper's Common Law Privilege.

AS AND FOR THIRTEENTH AFFIRMATIVE DEFENSE:

Defendant's actions are protected by Business Law Section 218.

AS AND FOR FOURTEENTH AFFIRMATIVE DEFENSE:

Defendant's alleged actions were protected by an absolute privilege.

AS AND FOR FIFTHTEENTH AFFIRMATIVE DEFENSE:

Defendant's alleged actions were protected by a qualified privilege of the New York General Business Law Section 218.

AS AND FOR SIXTEENTH AFFIRMATIVE DEFENSE:

Plaintiff did not sustain a direct pecuniary loss flowing from any alleged injury to his reputation as a result of the alleged defamation.

AS AND FOR SEVENTEENTH AFFIRMATIVE DEFENSE:

Upon information and belief, plaintiff was detained in a reasonable manner and not for more than a reasonable time and the persons who stopped plaintiff has reasonable grounds to believe plaintiff was committing or attempting to commit larceny on the premises.

AS AND FOR EIGHTEENTH AFFIRMATIVE DEFENSE:

Defendant cannot be liable to plaintiff in that defendant at all times exercised ordinary care.

**AS AND FOR A FIRST CROSS CLAIM AGAINST THE CITY OF NEW YORK,
COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, P.O. JOHN
DOE #1, BADGE #: 25511; P.O. JANE DOE #2, BADGE #: 12414**

If plaintiff sustained the injuries and damages in the manner and at the time and place alleged, and if it is found that the answering defendant is liable to plaintiff herein, all of which is specifically denied, then said answering defendant is entitled to indemnification from and judgment over and against the aforementioned co-defendant, for all or part of any verdict or judgment that plaintiff may recover against said answering defendant.

**AS AND FOR A SECOND CROSS CLAIM AGAINST THE CITY OF NEW YORK,
COMMISSIONER RAYMOND KELLY IN HIS OFFICIAL CAPACITY, P.O. JOHN**

DOE #1, BADGE #: 25511; P.O. JANE DOE #2, BADGE #: 12414

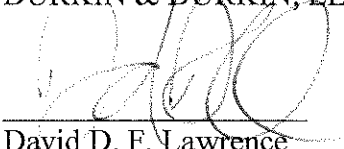
The answering defendant herein demands that the liability, if any, be apportioned and, therefore, the co-defendant will be liable to the answering defendant in the event judgment is recovered by the plaintiff in an amount equal to the excess over and above this answering defendant will be determined in accordance with the relative culpability of all the defendants herein.

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE that the defendant BEST BUY hereby demands a trial by jury.

DATED: New York, New York
March 12, 2014

DURKIN & DURKIN, LLP


David D. F. Lawrence
Attorneys for Defendant,
BEST BUY STORES, L.P.
80 Broad Street- Fifth Floor
New York, New York 10004
(212) 349-8173

TO: GETZ & BRAVERMAN
Michael Braverman, Esq.
Attorneys for Plaintiff
172 East 161st Street
Bronx, New York 10451
(718) 993-3000

Corporate Counsel of the
CITY OF NEW YORK
100 Church Street
New York, New York 10007

COMMISSIONER RAYMOND KELLEY
IN HIS OFFICIAL CAPACITY
One Police Plaza
New York, New York 10038

VERIFICATION

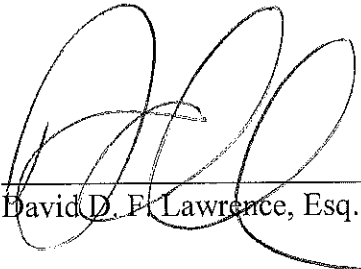
DAVID D. F. LAWRENCE, an attorney admitted to practice in the Courts of this State and a partner in the firm of DURKIN & DURKIN, LLP, attorneys for the Defendant, BEST BUY states:

That your affirmant has read the foregoing Answer and knows the contents thereof; that the same is true to affirmant's own knowledge, except as to matters herein stated to be on information and belief. The source of affirmant's information and belief, is an investigation caused to be made with respect to the facts in this action.

That the reason this verification is made by affirmant and not by the defendant is because the defendant does not maintain a place of business within the county where DURKIN & DURKIN, LLP maintains their office.

The undersigned affirms that the foregoing statement is true, under penalties of perjury.

DATED: New York, New York
 March 12, 2014



David D. F. Lawrence, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Our File No.: 3459-18

LIONELL WILLIAMS,

Plaintiff(s),

-against-

THE CITY OF NEW YORK,
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BADGE #: 12414 AND BEST BUY,

Defendant(s).

INDEX NO.: 300732/14

AFFIRMATION OF SERVICE

SIRS:

I, DAVID D. F. LAWRENCE, affirm under penalties of perjury that on March 12, 2014, the original **ANSWER TO VERIFIED COMPLAINT WITH CROSS CLAIMS** was filed with the Clerk, Supreme Court of the State of New York, County of Bronx, and that a copy of same was sent by certified mail postage prepaid to the following:

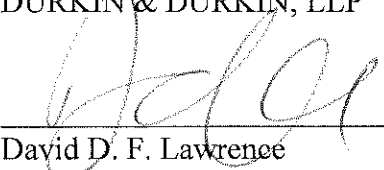
TO: GETZ & BRAVERMAN, P.C.
Michael Braverman, Esq.
Attorneys for Plaintiff
172 East 161st Street
Bronx, New York 10451
(718) 993-3000

CORPORATE COUNSEL OF THE
CITY OF NEW YORK
100 Church Street
New York, New York 10007

COMMISSIONER RAYMOND KELLEY
IN HIS OFFICIAL CAPACITY
One Police Plaza
New York, New York 10038

DATED: New York, New York
March 12, 2014

DURKIN & DURKIN, LLP



David D. F. Lawrence
Attorneys for Defendants,
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